

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON

TIMOTHY MAGUIRE HATFIELD,  
Plaintiff,

1:15-cv-01993-CL

v.

FINDINGS AND  
RECOMMENDATION

KLAMATH COUNTY BOARD,  
OF SUPERVISORS, et al.,  
Defendants

CLARKE, Magistrate Judge.

Plaintiff's Application to proceed *in forma pauperis* is allowed. However, for the reasons set forth below, plaintiff's complaint should be dismissed *sua sponte* on the grounds that it fails to state a claim and is legally frivolous. See, 28 U.S.C § 1915(d).

**BACKGROUND**

Plaintiff, *pro se*, filed a complaint captioned "Unlawful imprisonment /Discrimination of a Disabled person and Veteran /

Refusal to enforcement of a Lawful Court order Stocking protective order." Plaintiff's allegations concern the alleged conduct of law enforcement officers in Klamath County. Plaintiff's factual allegations are unclear, but he apparently alleges that law enforcement officers allow certain individuals to break the law and "terrorize" plaintiff.

#### STANDARDS

A complaint filed *in forma pauperis* may be dismissed before service of process if it is deemed frivolous under 28 U.S.C. § 1915(d). Neitzke v. Williams, 490 U.S. 319, 324 (1989); Jackson v. State of Ariz., 885 F.2d 639, 640 (9th Cir. 1989). A complaint is frivolous "where it lacks an arguable basis in law or in fact." Nietzke, 490 U.S. at 325; Lopez v. Dept. of Health Services, 939 F.2d 881, 882 (9th Cir. 1991); Jackson, 885 F.2d at 640. The term "'frivolous' . . . embraces not only the inarguable legal conclusion, but also the fanciful factual allegation." Neitzke, 490 U.S. at 325 (footnote omitted); McKeever v. Block, 932 F.2d 795, 798 (9th Cir. 1991); Jackson, 885 F.2d at 640.

Accordingly, in reviewing a complaint for frivolity, a trial court may "pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless." Neitzke, 490 U.S. at 327. In so doing, the assessment of the factual allegations must be weighted in favor of the plaintiff. Denton v. Hernandez, 112 S.Ct. 1728, 1733 (1992).

"Baseless" claims subject to sua sponte dismissal include those "describing fantastic or delusional scenarios." Neitzke, 490 U.S. at 328; Denton, 112 S.Ct. at 1733; McKeever, 932 F.2d at 798. "[A] finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible." Denton, 112 S.Ct. at 1733.

#### **DISCUSSION**

This court finds that the factual allegations in the instant case are irrational and wholly incredible. Regardless of how liberally the complaint is construed, plaintiff's complaint fails to state a cognizable claim. Accordingly, the complaint should be dismissed.

#### **CONCLUSION**

Based on the foregoing, plaintiff's complaint should be dismissed. Because it is apparent that the deficiencies of the complaint cannot be cured by amendment, the dismissal is with prejudice. The Clerk of the Court should be directed to enter an judgment dismissing this case with prejudice.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have fourteen (14) days from the date of service of a copy of this

recommendation within which to file specific written objections with the court. Thereafter, the parties have fourteen (14) days within which to file a response to the objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issues and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.

DATED this 18<sup>th</sup> day of November, 2015.

A handwritten signature in black ink, appearing to read 'Mark D. Clarke', is written over a horizontal line.

Mark D. Clarke  
United States Magistrate Judge